

House Study Bill 63 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON BALTIMORE)

A BILL FOR

1 An Act relating to forcible entry and detainer actions,
2 including granting concurrent jurisdiction to small claims
3 courts over preliminary hearings for certain forcible entry
4 and detainer actions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 631.1, subsection 2, Code 2017, is
2 amended to read as follows:

3 2. The district court sitting in small claims shall have
4 concurrent jurisdiction of an action for forcible entry and
5 detainer which is based on those grounds set forth in section
6 648.1, subsections 1, 2, 3, and 5, and 7. When commenced
7 under this chapter, the action shall be a small claim for the
8 purposes of this chapter.

9 Sec. 2. Section 631.1, Code 2017, is amended by adding the
10 following new subsection:

11 NEW SUBSECTION. 10. The district court sitting in small
12 claims has concurrent jurisdiction of preliminary hearings
13 under section 648.5, subsection 6, for claims brought in small
14 claims court under subsection 2 of this section and shall enter
15 a judgment of removal if the defendant fails to appear or fails
16 to raise facts constituting a meritorious defense as provided
17 in this subsection. At or prior to the preliminary hearing, a
18 defendant may file an affidavit raising facts that establish a
19 meritorious defense to eviction. At the preliminary hearing,
20 the district court sitting in small claims shall examine all
21 occupants of the property present at the hearing, except those
22 who have filed an affidavit establishing a meritorious defense,
23 to determine whether there are any genuine issues of material
24 fact which constitute a prima facie defense to eviction. The
25 court shall file a written record of the examination and the
26 court's findings. The court's failure to file a written record
27 of the examination and findings is an irregularity for purposes
28 of Iowa court rule 1.1004(1) or 1.1012(2). If the defendant
29 is not represented by counsel, a settlement agreement between
30 the defendant and the plaintiff entered into prior to the
31 preliminary hearing is not valid unless approved by the court
32 after the court has completed its examination. If a valid
33 settlement agreement does not exist and the defendant has
34 established a prima facie defense to eviction, the court shall
35 transfer the case from the small claims docket to be tried by

1 regular equitable proceedings.

2 Sec. 3. Section 648.1, Code 2017, is amended by adding the
3 following new subsection:

4 NEW SUBSECTION. 7. Where the vendee or other persons in
5 possession of the property have failed to vacate after the
6 forfeiture of a real estate contract under chapter 656 and the
7 vendor has filed with the court an affidavit establishing the
8 facts of the plaintiff's case, including a copy of the recorded
9 real estate contract and copies of all documents filed for
10 recording pursuant to section 656.5.

11 Sec. 4. Section 648.22, Code 2017, is amended to read as
12 follows:

13 **648.22 Judgment — execution — costs.**

14 If the ~~defendant is found guilty~~ plaintiff establishes
15 the plaintiff's claim to possession by a preponderance of
16 the evidence, judgment shall be entered that the defendant
17 be removed from the premises, and that the plaintiff be put
18 in possession of the premises, ~~and an.~~ An execution for the
19 defendant's removal within three days from the judgment shall
20 issue accordingly, to which shall be added a clause commanding
21 the officer to collect the costs as in ordinary cases.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with
24 the explanation's substance by the members of the general assembly.

25 This bill creates an action for forcible entry and detainer
26 following the forfeiture of a real estate contract and grants
27 concurrent jurisdiction to the district court sitting in small
28 claims over preliminary hearings for certain forcible entry and
29 detainer actions.

30 The bill provides that an action for forcible entry and
31 detainer is allowed where the vendee of a real estate contract
32 or other persons in possession of the property fail to vacate
33 after a valid forfeiture of the contract under Code chapter
34 656 and the vendor has filed with the court an affidavit
35 establishing the facts of the plaintiff's case, including a

1 copy of the recorded real estate contract and copies of all
2 documents filed for recording pursuant to Code section 656.5.

3 The bill further provides that the district court sitting
4 in small claims has concurrent jurisdiction of an action for
5 forcible entry and detainer that is based on a vendee failing
6 to vacate after forfeiture of a real estate contract.

7 Under current law, a preliminary hearing is held by the
8 district court for forcible entry and detainer actions to
9 determine if a genuine issue of material fact exists. The
10 bill provides that for forcible entry and detainer actions
11 where the plaintiff alleges either that the defendant has by
12 force, intimidation, fraud, or stealth entered upon the prior
13 actual possession of another in real property and detained the
14 property, that a lessee has held over after the termination
15 of the lease, holds contrary to the terms of a lease, or has
16 not paid rent that is due, or that a vendee has failed to
17 vacate after a valid forfeiture of a real estate contract,
18 the district court sitting in small claims has concurrent
19 jurisdiction over such preliminary hearings. If the defendant
20 fails to appear or fails to raise facts constituting a
21 meritorious defense, the court is required to enter judgment
22 of removal. At or prior to the preliminary hearing, a
23 defendant may file an affidavit raising facts that establish a
24 meritorious defense to eviction. At the preliminary hearing,
25 the district court sitting in small claims is required to
26 examine all occupants of the property present at the hearing,
27 except those who have filed an affidavit establishing a
28 meritorious defense, to determine whether there are any genuine
29 issues of material fact which constitute a prima facie defense
30 to eviction. The court is required to file a written record
31 of the examination and the court's findings. The court's
32 failure to file such items is an irregularity for purposes of
33 Iowa court rules and may result in granting a new trial or
34 constitute grounds for vacating or modifying a judgment.

35 The bill also provides that if the defendant is not

1 represented by counsel, a settlement agreement between
2 the defendant and the plaintiff entered into prior to the
3 preliminary hearing is not valid unless approved by the court
4 after the court has completed its examination. If a valid
5 settlement agreement does not exist and the defendant has
6 established a prima facie defense to eviction, the court must
7 transfer the case from the small claims docket to be tried by
8 regular equitable proceedings.

9 The bill provides that if the plaintiff in an action for
10 forcible entry and detainer establishes the plaintiff's claim
11 to possession by a preponderance of the evidence, the court
12 shall enter judgment for removal of the defendant from the
13 premises and put the plaintiff in possession of the premises.